CONSENT IN LARCENCY. — The question, what constitutes consent in larceny, has again been passed upon in Great Britain. The answer has been in the air since the cases of *Reg.* v. *Ashwell*, 16 Q. B. D. 190 (1885), and *Reg.* v. *Flowers*, 16 Q. B. D. 643 (1886). In the first of these cases B. gave A. a sovereign, both supposing it a shilling. When A. discovered the mistake, he kept the money, was convicted of larceny, and by an evenly divided court, this conviction was affirmed. Less than three months later the same court, on substantially the same facts, unanimously quashed a similar conviction in *Reg.* v. *Flowers*. These decisions were reviewed in a discussion of Consent in the Criminal Law, by Prof. J. H. Beale, Jr., 8 Harvard Law Review, 317, and have elsewhere excited considerable controversy; so that the recent case of *Reg.* v. *Hehir*, 29 Ir. L. T. 323, which settles the law for Ireland, is of no little interest. A £10 note was mistaken for a £1 one under circumstances similar to those of *Reg.* v. *Ashwell*, and by a vote of five to four the latter case was expressly disregarded, and a conviction quashed. This decision, coupled with *Reg.* v. *Flowers*, which, however, assumed to distinguish *Reg.* v. *Ashwell*, renders it very doubtful whether *Reg.* v. *Ashwell* would be followed even in England. The Irish court certainly seems to do less violence to any logical theory of consent.

INTERSTATE COMMERCE AGAIN.— The vexed topic of interstate commerce control has cropped up again. In both *Swift* v. *P. & R. R. Co.*, 64 Fed. Rep. 59, per Grosscup, J., and in *Gatton* v. *C., R. I. & P. R. Co.*, 63 N. W. Rep. 589, per Kinne, J., it is held that in the absence of legislation by Congress, excessive charges paid for carriages of goods from one State to another cannot be recovered by the shipper. The plaintiff's right to recover depended on the existence of a State common law controlling interstate commerce, or of a federal common law. The existence of either was denied. Such a doctrine would seem to mean that in the absence of legislation by Congress our courts are powerless to enforce the common-law liabilities of interstate carriers, and must leave the public at their mercy, for it appears to follow logically, as was pointed out by Shiras, J., in *Murray* v. *C. & N. W. R. Co.*, 62 Fed. Rep. 24, 37, that it is "open to all common carriers engaged in interstate commerce to act as they please in regard to accepting or refusing freights, in regard to the prices which they may charge, the care they shall exercise, and the speed with which they shall transport and deliver the property placed in their charge." [See also 7 Harvard Law Review, 488, and 8 Harvard Law Review, 168.] The shippers have only the right to enforce contracts, and even in regard to making contracts, the interstate carriers are absolved from the common-law restrictions governing the contracts of common carriers.

It is not disputed that before the adoption of the Constitution the various States could enforce the common-law liabilities and duties of carriers engaged in interstate commerce. The moot point is the effect of the adoption. The view necessarily involved in the cases under discussion is that the control of interstate commerce by State common law was destroyed, and accordingly that until some Act of Congress no tribunal could enforce the common-law liabilities of interstate carriers. On the other hand, it has been held that the Constitution adopted a federal common law, which took the place of State common law on questions of interstate commerce, and was supreme until in turn superseded by Act